Contents

Section 7

Southeast Colorado River Basin

Utah State Water Plan

Regulation/Institutional Considerations

7.1 INTRODUCTION

This section of the Southeast Colorado River Basin Plan discusses the state and federal laws and regulations dealing with water development, storage, distribution and quality. The following discussions also include the responsibilities delegated to state and federal agencies to administer these water laws and regulations. One of the primary purposes of Utah's water-related regulatory agencies is to provide orderly water rights administration, adequate good quality water supplies within an acceptable environment to meet the needs of the people.

7.2 SETTING

There is extensive regulation of the water resources throughout the Southeast Colorado River Basin that are carried out at the local, state and federal levels. At the local level, water resources are generally managed by municipal public works departments; water conservancy, special service and conservation districts; irrigation companies; and private water companies. In addition, the Southeastern Public Health District has oversight on water quality as it impacts the public. These local agencies are involved with the day to day operation of the many storage, treatment and distribution systems that make it possible to deliver surface water and groundwater to the various municipal and industrial, domestic and agricultural end users. Although local water agencies are responsible for the ultimate implementation and adherence to all state and federal water laws and regulations, they are generally not responsible for their creation or passage. Water laws and regulations are created by state and federal governing bodies who delegate the enforcement or administration to a number of public water and environmental agencies.

> Regulation has fostered the spirit of cooperation in water use and restored the value of clean, pure water surrounded by a pleasing environment.

7.3 WATER RIGHTS REGULATIONS

The administration of water rights law is the responsibility of individual state governments. In Utah, the State Engineer through the Division of Water Rights has the responsibility for: 1) Processing water rights applications; 2) distribution of water; 3) adjudication of surface water and groundwater rights; 4) dam safety programs; 5) regulation of alterations to streams and rivers; 6) licensing well drilling contractors and administering well drilling regulations; 7) studies to assess the extent of existing surface water and groundwater supplies; and 8) the maintenance of all filed water rights records. In addition, the State Engineer works with federal agencies and Indian tribes on reserved water rights, wetlands and other federal activities where mandates impact state water law.

The State Engineer is responsible for determining whether there is unappropriated water and if additional applications will be

processed. This is determined through data analysis and public input. Action on an application will be withheld or rejected if it is determined it will interfere with another right, a more beneficial use, or be detrimental to the public welfare or the natural environment. This also applies to changes in the point of diversion, place of use and/or nature of use of an existing water right.

Verification of actual surface water and groundwater diversions are made to assure compliance with the adjudicated rights. Accordingly, gaging stations have been constructed at critical points on the existing river systems, often in cooperation with local entities and other state and federal agencies, to assist in the management of the water resources. Flow measurements are taken at these points on a predetermined schedule by a river commissioner. Groundwater diversions are metered or may be monitored by evaluating pumping data from selected wells. This is all done under the supervision of the State Engineer. If a single irrigation company or user has the rights to the entire stream, the owner takes the responsibility for the water distribution.

Diversion near Blanding

There are two river commissioners appointed in the Southeast Colorado River Basin. One commissioner is appointed for the Blue Mountain Distribution System and one for the Mill Creek-Pack Creek Distribution System. Their general responsibilities are to measure the stream flows and account for the diversions to the distribution systems. These data are published in an annual report submitted to the State Engineer's office. The balance of the water users provide their own water distribution controls.

Perfected, decreed or diligence water rights are considered real property. A pending application and stock in mutual water companies are considered personal property. As such, they can be bought and sold on the open market, and can be a primary source of collateral to finance water-related operations. An amendment to Section 73-1-10 and 11 of the Utah Code, annotated states "A water right . . . shall be transferred by deed in substantially the same manner as is real estate."

7.4 WATER QUALITY CONTROL

Water quality and pollution control regulations deal with the contamination of water in the outdoor environment. These regulations are created through state and federal legislation. The most comprehensive and enforced pieces of water quality legislation include the Utah Water Quality Act and the federal Water Pollution Control Act (Clean Water Act).

7.4.1 Utah Water Quality Act

When the Legislature passed the Utah Water Quality Act (UWQA) in 1991, the Water Quality Board and Division of Water Quality were assigned the responsibility to develop state water pollution standards, regulations and policies to prevent, control and abate new or existing surface water and groundwater pollution and to administer the federal standards and regulations under the federal Water Pollution Control Act of 1977 (Clean Water Act). These responsibilities also include: 1) Development and implementation of water quality management plans; 2) state certification and enforcement of various effluent discharge permit requirements; 3) administration of various water quality monitoring programs; 4) administration of state revolving wastewater construction loan programs; and 5) review of construction plans

for wastewater disposal systems. In addition, the Utah Water Quality Board adopted and enforces the "Ground Water Protection Regulations." The authority for federal Clean Water Act certification is carried out through the Water Quality Board by the Division of Water Quality. Whether the Environmental Protection Agency (EPA) administers a Clean Water Act program directly or delegates it to a state (primacy), EPA retains the oversight role to ensure compliance.

7.4.2 Federal Water Pollution Control (Clean Water) Act

The EPA is the regulatory agency charged with the responsibility of enforcing the Water Pollution Control Act (WPCA) and two of its major amendments: the Clean Water Act (CWA) which was passed by Congress in 1977 and the Water Quality Act (WQA) passed in 1987. However, the enforcement effort is done in close cooperation with the Utah Department of Environmental Quality which has primacy and administers the issuance of discharge permits for both point and non-point source pollution.

The WPCA generally includes regulations and programs designed to maintain a minimum standard of water quality in the outdoor environment. Minimum acceptable levels of water quality are monitored and regulated by a number of requirements including establishment of maximum contamination levels (MCL's) for raw drinking water sources. Under the Clean Water Act amendments, Section 401 certification is delegated through the Water Quality Board to the Division of Water Quality. This certification includes issuing Section 402 National Pollutant Discharge Elimination System (NPDES) permits to all entities responsible for point discharges to existing surface waters and Section 404 Corps of Engineers dredge and fill permits.

Utah is required to prepare a "303(d) list" showing all the stream reaches and water bodies that do not meet established water quality standards. The state prioritizes this list for planned actions designed to bring the waters into compliance. As part of this process, a total maximum daily load (TMDL) is established as part of the plan to improve water quality problems. To achieve the TMDL goal, a best management practice can be implemented to reduce sediment loading, reduce components of the total dissolved solids or some other action to achieve the desired water quality.

Sheley Diversion

7.5 DRINKING WATER REGULATIONS

Drinking water standards and regulations are established and enforced under the Safe Drinking Water Act by the EPA and by the Utah Drinking Water Board through the Division of Drinking Water (DDW). These provide for the monitoring and maintenance of public drinking water quality and provide funding for the construction of water treatment facilities. In general, the EPA delegates the responsibility of monitoring existing drinking water quality and the administration of various drinking water funding programs (primacy) to state agencies. The DDW is the agency responsible for all drinking water issues, projects and programs.

As prescribed by the Utah Safe Drinking Water Act, the division is responsible for maintaining and enforcing drinking water standards through: 1) Development and implementation of a comprehensive water monitoring program; 2) training or certification of treatment plant and distribution system operators; 3) reporting of water quality data to

the EPA; and 4) general administration of a rating program to assess the overall effectiveness of existing treatment plants and distribution systems.

There are 20 community and 24 non-community water systems in the basin. These are monitored by the DDW to assure that all public drinking water adheres to state and federal regulations. Three water systems are supplied by surface water treatment plants, four communities rely all or partly on springs and the balance use wells. In addition, there are nine "Other Navajo Indian Community Water Systems" regulated by the Navajo Nation Public Water System Supervision Program.

Moab water tank

The Drinking Water Board has received funding to establish a Drinking Water State Revolving Fund (SRF) through the 1996 reauthorized Safe Drinking Water Act. Additional amounts allocated for project construction funding are; $6.0 million in 1999, $6.5 million in 2000, and between $6.0 million and $6.5 million each year through 2003. The state is expected to provide an additional 20 percent of each appropriation, or a total of about $6.3 million, as matching cost-share funds. There will also be grant funds available for regional water system planning.

Drinking water systems are shown in Table 11-1 and Table 11-2. Systems serving over 800 people are required to have a certified operator.

7.6 RESERVED WATER RIGHTS

There are two areas in the Southeast Colorado River Basin where federal reserved water rights will play a part in development of the water resources. These are for the Navajo Indian Reservation and the several national parks and monuments. Reserved water rights for the reservations are not fully defined and integrated with water rights established under state water law. These water rights were created outside the traditional western states method of acquisition through the permit system where beneficial use is the limit and measure of the right. Although these rights have been created outside the system of Utah water laws, they still need to be established under these laws. Many of these rights, which may be claimed, have not been identified, quantified or placed to beneficial use.

7.6.1 Indian Reserved Water Rights

The extent of the reserved water rights for the Navajo Nation has not been defined. Where rights may be claimed for the irrigation of cropland, considerable water could be required. There are also other types of uses that may be included in reserved water rights claims. This could affect future development of the water resources in this area as well as in other portions of the upper Colorado River drainage. There are already developments to provide culinary water in most of the chapters in the reservation. These include wells, springs and galleries (narrow passageway or tunnel). In addition, there will be a need for more culinary water development in each of the Navajo Nation chapters in Utah.

To quantify Indian reserved water right claims, the U.S. Supreme Court has ruled that the practicably irrigable acreage (PIA) should be the determination. Such claims are generally resolved in a general water adjudication in which the United States and the Tribe are a party. Currently, there is no active water adjudication covering the reservation lands.

The Ute Mountain Utes live on tribal lands on White Mesa south of Blanding and farm and graze lands in the Allen Canyon area west of Blanding. They have one deep well that produces culinary water for the residents living on White Mesa. This well has a certificated water right.

7.6.2 National Parks and Monuments

Currently, the State Engineer and the National Park Service are pursuing settlement agreements to quantify the federal reserved water rights for national parks and monuments. An agreement has been reached for Hovenweep National Monument and efforts are underway to resolve the claims for the Arches National Park, Canyonlands National Park, Glen Canyon National Recreation Area and Natural Bridges National Monument.

7.7 ENVIRONMENTAL CONSIDERATIONS

The amount and quality of water dictates the characteristics of the natural environment and its ability to sustain most forms of life. Water for human consumption is regulated and treated to protect against the spread of water-borne disease. However, water to sustain fish and wildlife species must also be regulated to assure the maintenance of quality habitat in streams, lakes, reservoirs and wetlands.

Current federal regulations to protect fish and wildlife species can have direct and significant impacts on the development of future water supplies and the ongoing operation of existing water projects. Impacts on threatened and endangered species must be taken into consideration during the early planning phases of any water resources related project. The Endangered Species Act (ESA) requires that agencies, organizations and private individuals consult with the U.S. Fish & Wildlife Service (FWS) to assess any and all impacts a potential project may have on threatened and endangered species. The consultation requirement allows the FWS the opportunity to become involved in the early phases of a project to assist the developer or contractor in determining design or construction options that could minimize the impacts on threatened and endangered species. They can also recommend a project be terminated.

For projects that require the approval of a federal Clean Water Act 404 permit, developers or contractors are required to submit pertinent design and operation data to the U.S. Army Corps of Engineers. This information is reviewed and evaluated by a number of federal and state agencies for overall feasibility and potential impacts on fish and wildlife habitat. The FWS is the reviewing agency for fish and wildlife habitat issues. State agencies involved in this review include the Division of Water Rights, the Division of Wildlife Resources and the Division of Water Quality.

7.8 DAM SAFETY

Dams impounding water in storage reservoirs represent a vital and significant investment in the overall development of this area's resources. However, they also represent a potential loss of life and property in the event of catastrophic disasters. To identify dams with potential for the loss of life and property damage, the State Engineer inspects dams throughout the state and classifies them with high, moderate or low hazard ratings. The main factor in the designation of a high hazard rating is the potential for property damage and loss of life, not the condition of the dam.

There are 51 reservoirs with capacities of 10 acre-feet or more in the two county area. These reservoirs were constructed to provide storage for both culinary and irrigation water, flood control and limited recreation. The largest is Recapture Creek Reservoir with a capacity of 9,319 acre-feet. The five dams classified as high hazard are listed in Table 7-1. In addition, there are 14 dams classified as moderate hazard and 33 dams are classified as low hazard. ❑

Table 7-1
HIGH HAZARD RESERVOIR DAMS

County/Name	Owner	Stream	Height (feet)	Capacity (acre-feet
Grand County				
Tusher Canyon Detention	Moab City	Tusher Canyon	19	12
San Juan County				
Ken's Lake	Grand Co. WCD	Mill Creek	91	2,820
Loyd's Lake	San Juan WCD	South Creek	66	3,500
Recapture Creek	San Juan WCD	Recapture Creek	120	9,319
Starvation Canyon	Blanding City	Johnson Creek	54	600

Source: Utah State Engineer's Office